

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

CONSIDERATION OF MEDICAID QUALIFYING TRUST - UNDUE HARDSHIP

Citation

Condition or Requirement

1902(k)(4) of the
Act, P.L. 99-272
(§9506)

The following criteria will be used to determine whether the agency will not count the funds in a trust as specified in ATTACHMENT 2.6-A, section C.2., because it would work an undue hardship for categorically and medically needy individuals:

The Commonwealth does not, at the present time, recognize undue hardships in cases of qualifying trusts.

- §1. In determining eligibility for Medicaid the maximum amount of payments permitted under the terms of a "Medicaid qualifying trust" to be distributed to the grantor, if the trustee exercised his discretion to the fullest extent possible, shall be considered available in determining the grantor's eligibility for Medicaid.

A "Medicaid qualifying trust" is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.

The requirements of this section shall apply without regard to:

- A. Whether or not the Medicaid qualifying trust is irrevocable or is established for purposes other than to enable a grantor to qualify for Medicaid; or
- B. Whether or not the trustee(s) exercises his discretion to distribute any payments to the individual.

This provision shall not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded.